Supreme Court, U.S.
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No. 105, Original

IN THE

Supreme Court of the United States

October Term, 1985

STATE OF KANSAS,
Plaintiff,

v.

STATE OF COLORADO,
Defendant.

KANSAS' REPLY TO COLORADO'S COUNTERCLAIM

ROBERT T. STEPHAN
Attorney General of Kansas

JOHN W. CAMPBELL
Assistant Attorney General

LEE ROLFS
Assistant Attorney General

RICHARD A. SIMMS
Special Assistant Attorney General
Counsel of Record

Hinkle, Cox, Eaton, Coffield & Hensley
218 Montezuma
Post Office Box 2068
Santa Fe, New Mexico 87504
(505) 982-4554

June 10, 1986

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Pursuant to Rule 9 of the Rules of the Supreme Court and Rule 7 of the Rules of Civil Procedure, the plaintiff, State of Kansas, replies to the State of Colorado's counterclaim by stating:

1. The plaintiff admits the allegation of jurisdiction in paragraph one.

2. The plaintiff admits the allegations in paragraphs two, three, and four.

3. The plaintiff denies the allegation of malfeasance on the part of officials charged with the administration of water rights in Kansas in paragraph five and further denies that Kansas water users have not promptly applied water to beneficial use as provided in Article V(E)(2) of the Arkansas River Compact.

4. The plaintiff denies the allegations in paragraph six.

5. The plaintiff denies the allegations in paragraph seven.

AFFIRMATIVE DEFENSES

1. As defined in Article III(B) of the Arkansas River Compact, the waters of the Arkansas River controlled by the Compact are those waters "originating in the natural drainage of the Arkansas River, including its tributaries, upstream from the Stateline . . . ." Accordingly, any depletion of surface flow of the Arkansas River in Kansas which might occur as a result of ground water diversions in Kansas, could not affect Colorado's obligation to make deliveries of usable stateline flows pursuant to the Arkansas River Compact.

2. Diversions of ground water in Kansas violate no interstate compact or federal law.

3. Any use of ground water in Kansas is irrelevant to the substantial, postcompact decline in usable stateline flows caused by the State of Colorado and its water users, except to the extent that Colorado's failure to deliver stateline flows has forced Kansas users, to their injury, to rely alternatively on ground water sources of supply below the stateline.

WHEREFORE, the State of Kansas respectfully prays that the Court issue its decree commanding the State of Colorado, its officers, citizens, and political subdivisions to deliver the waters of the Arkansas River in accordance with the provisions of the Arkansas River Compact and providing for such other and further relief as the Court may deem appropriate.

Respectfully submitted,

ROBERT T. STEPHAN
Attorney General of Kansas

JOHN W. CAMPBELL
Assistant Attorney General

LEE ROLFS
Assistant Attorney General

RICHARD A. SIMMS
Special Assistant Attorney General
Counsel of Record

Hinkle, Cox, Eaton, Coffield & Hensley
218 Montezuma
Post Office Box 2068
Santa Fe, New Mexico 87504
(505) 982-4554

CERTIFICATE OF SERVICE

Pursuant to Rule 28(5) of the Supreme Court Rules, I certify that twelve copies of the foregoing Kansas' Reply to Colorado's Counterclaim were served on June 10, 1986 on:

David W. Robbins
Hill & Robbins
1441 Eighteenth Street, Suite 100
Denver, Colorado 80202

RICHARD A. SIMMS
Special Assistant Attorney General
Counsel of Record